

July 15, 2020

Via ECF

Hon. Roanne L. Mann
Chief Magistrate Judge
United States District Court
For the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Joint Status Update; *Suffolk County Water Authority v. The Dow Chemical Company et al.*, No. 2:17-cv-6980-NG-RLM, and Related Cases

Dear Judge Mann:

On behalf of all 32 parties in the referenced cases, we write to provide this joint status report in advance of the conference currently scheduled with the Court on July 22, 2020.

The parties have worked efficiently and cooperatively to make progress on discovery despite the challenges and delays COVID-19 and its related closures have presented. The following activities have been completed since our last report:

1. The parties have served additional and supplemental responses and document productions in connection with their initial Fact Sheet responses. They continue to work cooperatively on these issues and have no disputes that require the Court's assistance at this time.
2. On July 1, 2020, each of the 27 Plaintiffs and 5 Defendants exchanged responses and objections to their initial written discovery demands and commenced the rolling production of documents.¹ The parties are in the process of reviewing and analyzing these voluminous materials to determine what meet and confer discussions may be needed. As the parties have agreed to rolling productions, additional documents will be produced. At the present time, the parties do not have any disputes that require the Court's guidance.
3. The parties have served a total of 31 third-party subpoenas and Freedom of Information requests: (1) the parties jointly served six subpoenas and two Freedom of Information requests; (2) Plaintiffs served 19 subpoenas; and (3) Defendants served four subpoenas. With limited exception, these third parties have made contact with the parties and have made initial document productions and/or provided written responses, or they have indicated that they need additional time to respond because of COVID-related closures—indeed, 20 of the 31 third parties have not produced any documents yet. As could be

¹ By agreement, Defendants Shell and P&G intend to begin their rolling productions on or before July 31, 2020. The parties have agreed to an initial set of search terms for P&G to apply to its ESI and continue to confer regarding the search terms to be employed by Shell.

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expected, COVID-related issues have affected the degree of success the parties have experienced in receiving third-party document productions, but the parties are continuing to be as flexible as possible with third-party response times and production issues. The parties will report to the Court at the next status conference, or sooner, if warranted, regarding any disputes concerning particular third-party subpoenas and FOIL requests.

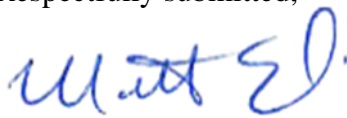
4. At this time, there is only one third-party dispute that may require assistance from the Court. That dispute involves the heightened confidentiality restrictions the New York Department of Environmental Conservation (DEC) and the New York Department of Health (DOH) have sought from the parties prior to producing certain categories of well data. Discussions with the DEC and DOH on this request have been difficult to schedule because of those agencies' reported COVID-related activities. Despite this, the parties remain in discussions with the DEC and DOH and are hopeful they can reach agreement. If not, they may seek the Court's assistance.
5. On July 21, 2020, Defendants The Dow Chemical Company, Ferro Corporation and Legacy Vulcan, LLC will answer the Complaints in the cases that were the subject of the three Defendants' motions to dismiss, which Judge Gershon denied on June 4, 2020.
6. Defendants Procter & Gamble and Shell Oil's motions to dismiss Hicksville Water District's and New York American Water's complaints were fully briefed in February 2020 and a decision is still pending.

Based on the above progress, the parties propose that they provide their next joint status report to the Court in three months. By that time, the parties should have a better idea as to the scope of remaining document discovery and will be in a better position to discuss next steps. If discovery issues arise that require the Court's assistance before then, they will follow the Court's Rules to seek a prompt resolution.

Finally, while the parties are prepared to proceed with the July 22 conference as scheduled, they do not have any issues currently requiring the Court's guidance. Accordingly, the parties respectfully propose that the Court set a new conference date for approximately three months from now. If the Court prefers to move forward with the July 22 conference, the parties request that the conference be conducted telephonically or through other remote means, due to the number of attorneys involved and COVID-related travel issues.

We thank the Court for its consideration and hope that all Court personnel are safe and well.

Respectfully submitted,



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